

Cox Padmore Skolnik & Shakarchy LLP

Attorneys at Law

Ralph N. Gaboury, Esq.
Of Counsel
Also admitted in
Massachusetts and Rhode Island

October 1, 2018

Via ECF Filing
Courtesy copy by Fax to (212) 805-7986

Hon. Paul G. Gardephe, U.S.D.J.
United States District Court
for the Southern District of New York
40 Foley Square, Room 2204
New York, NY 10007

**Re: Pearson Education, Inc., et al v. Doe 1 d/b/a Anything You Can
Imagine, et al., (SDNY 1:18-cv-7380-PGG)**

**Request for Pre-Motion Conference for Motion to Dismiss
pursuant to Rule 12(b)(6) by Defendant Krista Hale sued herein as
Doe 2 Momma's Media 'N More**

Dear Judge Gardephe:

This firm represents defendant Krista Hale, the sole proprietor of the Amazon online storefront named in the above-referenced proceeding as anonymous defendant "Doe 2 Momma's Media 'N More" ("Defendant Hale"). Pursuant to Rule IV(A) of Your Honor's Individual Practices, Defendant Hale respectfully requests a pre-motion conference with respect to her planned motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for plaintiffs' failure to state a claim upon which relief can be granted. **Please note that this request is solely with request to Defendant Hale, and does not apply to defendant John Moniz, the sole proprietor who operates the Amazon online storefront "Booksabillions" also named in this proceeding as anonymous defendant "Doe 2."**

As confirmed by telephonic conference with counsel for the plaintiffs, Matthew Fleischman of Oppenheim Zebrak, LLP, plaintiffs do not consent to this motion.

Plaintiffs filed this lawsuit, alleging that Defendant Hale, through her Momma's Media 'N More online Amazon storefront (which she operates as a sole proprietor), is liable for infringement of certain copyrights and trademarks owned by the plaintiffs. However, in the Complaint, plaintiffs allege sales of the accused counterfeit works solely through the Amazon

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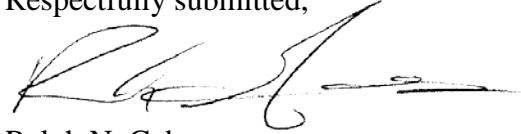
online storefront named “Booksabillions,” which is not owned or operated by Defendant Hale, but is in fact an entirely separate sole proprietorship of defendant John Moniz (“Defendant Moniz”) who, as mentioned above, was also sued herein as anonymous defendant “Doe 2.”

In the Complaint, with respect to Defendant Hale’s online Amazon storefront, Plaintiffs state only that “Defendant Doe 2 operates the Booksabillions and Momma’s Media ‘N More Online Storefronts on Amazon.com” (Complaint ¶ 12) and make no other factual assertions in the Complaint as to why Defendant Hale’s storefront was included as part of named anonymous defendant Doe 2. Although plaintiffs make a general statement with respect to certain “contact information” provided by Amazon (Complaint ¶ 66), they make no allegation as to what specific information was provided with respect to either Defendant Hale or Defendant Moniz, nor how that information was used to determine that Defendant Hale’s storefront should be implicated, despite none of the alleged counterfeit books having been sold through her storefront.

Because the Complaint does not allege any sales of infringing works through Defendant Hale’s Momma’s Media ‘N More storefront, plaintiffs have failed to state a claim upon which relief can be granted as to Defendant Hale. Accordingly, all claims against Defendant Hale with respect to her online Amazon storefront “Momma’s Media ‘N More” should be dismissed, the stipulated preliminary injunction between plaintiffs and Defendant Hale be amended to remove all references to her and her storefront, and her storefront name should be stricken from the caption of the case.

Accordingly, Defendant Hale respectfully requests a pre-motion conference with respect to her planned motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for plaintiffs’ failure to state a claim upon which relief can be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. N. Gaboury', with a long horizontal flourish extending to the right.

Ralph N. Gaboury

cc: Kerry M. Mustico (counsel for plaintiffs) (by ECF Filing)
Matthew I. Fleischman (counsel for plaintiffs) (by ECF Filing)